IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 13 OF 2005

Shivappa Nagappa Devnaik & others. ... Appellants.

Versus.

Sangli Municipal Council Sangli. ... Respondents.

Shri S.S.Patwardhan for the Appellants.

Shri N.V.Walawalkar for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 31st March, 2005.

P.C.:

1. Heard the learned Counsel for the parties.

2. Admit on the substantial questions of law in grounds Nos.3 to 7 of the Memorandum of Appeal. Shri Walawalkar waives service for the Respondent. Considering the facts and circumstances of the case, the Appeal is taken up for hearing forthwith.

3. At the outset Shri Walawalkar the learned Counsel appearing for the Respondent pointed out that the Respondent (The Municipal Corporation of City of Sangli, Miraj and Kupwad) has passed a Resolution bearing No.167 of 2004-05 dated 20th January 2005 whereby it is resolved that in case of the stalls which are in existence by the side of the main roads in the city which are required to be removed, the persons affected will be rehabilitated by making available sites

elsewhere in the city as may be decided by the Respondents. He submitted that in view of the said resolution as and when the Respondents need the place where the stalls of the Appellants are in existence, suitable open sites will be offered to the Appellants by the Respondents in the city in consonance with the said Resolution.

4. The Appellants have tendered a sworn undertaking dated 22nd March 2005 which is taken on record and marked "X" for identification. Clauses (1) to (3) of the said Undertaking read thus:

(1) We say that the offer of the respondent herein under its General Body Resolution No.167/2004-05 dated 20-01-2005 is acceptable to us since the respondent corporation has agreed before this Honourable court not to evict us from the suit premises until we are suitable rehabilitated as per the said resolution.

(2) We undertake to vacate the suit stalls within a period of 4 weeks from the date of receipt of notice by the Respondent-Corporation to shift our businesses to the stalls earmarked for our rehabilitation.

(3) Pending our rehabilitation we will keep paying the agreed rent of Rs.2,555/- p.a. or as may be revised in the future. We will also pay the taxes of the suit stalls. We undertake not to create any third party rights with respect to the suit stalls nor to part with possession thereof pending our rehabilitation as agreed by the Respondent-Coproation.

The undertakings given by the Appellants are accepted. Considering the statements made by the learned Counsel for the Respondent, a copy of the Resolution No.167 which is placed on record of this Appeal and the said Undertakings of the Appellants which are accepted, the decree passed by the Courts below will have to be modified suitably.

5. Hence the following order is passed:

(i) The impugned Judgments and Decrees are set aside and the suit filed by the Appellants stands decreed in the following terms:

. "(a) As and when the Defendants need the sites below the stalls of the Plaintiffs, the Defendants will offer alternative

sites in terms of the General Body Resolution No.167/2004-05 dated 20th January 2005 by sending written intimation to the Plaintiffs at the address mentioned in the cause title of the plaint.

. (b) On receiving the intimation in writing from the Defendants, the Plaintiffs will vacate the stalls within a period of four weeks from the date of receipt of the intimation and will shift their business activities to the space/sites provided by the Defendants elsewhere in the city.

. (c) In case the Plaintiffs fail to vacate the existing stalls within the period of four weeks from the date of receipt of the intimation from the Defendants, it will be open for the Defendants to take immediate action of removal of the stalls of the Plaintiffs.

. (d) The Plaintiffs will continue to pay rent at the rate of Rs.2555/- per annum or at such other rate as may be revised from time to time by the Defendants in respect of the existing stalls.

. (e) The each of the Plaintiffs will pay the rent at the rate of Rs.2535/- p.a. with effect from 1st February 2005. The Plaintiffs will be bound to pay the rent in respect of the sites which may be allotted to them by the Defendants in accordance with the policy of the Respondents.

. (f) The Plaintiffs will not create any third party interests in respect of the suit stalls and will not part with the possession thereof without permission of the Defendants."

(ii) Second Appeal is disposed of in the above terms with no order as to costs throughout.

(iii) The parties to act on an authenticated copy of this order.

Judge.